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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUN 13 1997

Federal Communications Commission  
Office of Secretary

In the Matter of

Implementation of Section 309(j)  
of the Communications Act -  
Competitive Bidding

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MM Docket No. 87-268

TO: The Commission

**PETITION FOR RECONSIDERATION**

Benedek License Corporation ("Benedek"), licensee of Station WHSV-TV, Harrisonburg, Virginia ("WHSV-TV"), urges the Commission to reconsider and modify its advanced digital television ("DTV") allotment and assignment for WHSV-TV (NTSC Channel 3, DTV Channel 49) adopted in the Sixth Report and Order, MM Docket No. 87-268 ("Sixth R&O"). WHSV-TV submits that such modification is necessary to prevent the loss of service due to avoidable interference that will displace several thousand viewing households. We note at the outset, however, that we endorse the Commission's decision to allot and assign DTV channels in manner that is based on replication, maximization and minimization of interference -- principles we and other broadcasters have long endorsed. We hope that the initial flurry of petitions the Commission undoubtedly will receive does not leave the impression that the transition to digital television is anything but sound governmental policy and a process we wholeheartedly embrace.

Certain assignment decisions outlined in the Sixth R&O, however, should be reconsidered. Specifically, Benedek requests that the Commission reconsider its decision to assign WHSV-TV DTV Channel 49 with a power level of 91.1 kW. As the Commission is

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well aware, with this channel and power assignment, the station will not be able to replicate its NTSC service area. Indeed, the replication calculation for WHSV-TV -- 76.1 percent service area match -- is one of the worst in the entire Table of DTV Allotments/Assignments ("DTV Table").<sup>1</sup> Unless this allocation is changed, WHSV-TV will lose thousands of potential viewers and its very viability may be in jeopardy.

To avoid a loss of service to a significant, and growing number, of households in WHSV-TV's core service area, we are studying the possibility of using one of the available alternative VHF channels instead of DTV Channel 49. Because of the limited time available for engineering evaluation and the failure of the Commission to release OET Bulletin No. 69, we have not been able to conclusively determine the most appropriate channel alternative. But we believe, based on our preliminary study, that a more appropriate channel is available for WHSV-TV without causing interference to other stations or otherwise disrupting the DTV Table. WHSV-TV will supplement its filing once concrete engineering analysis becomes available.

**I. THE DTV TABLE ASSIGNS WHSV DTV FACILITIES THAT PRECLUDE REPLICATION.**

The Sixth R&O recognizes that a cornerstone principle for the successful transition into the digital era will be the ability of stations to replicate existing service areas, thereby preserving viewer access to free over-the-air television. As broadcasters have long advocated, and the Sixth R&O (§ 29) acknowledges, replication "offers important benefits for both viewers and broadcasters." The principles of replication will minimize viewer

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<sup>1</sup> Indeed, only four (4) of the 1601 allotted stations have a DTV/NTSC area match less than 76.1%. Sixth R&O, Appendix B.

disruption and ensure that "broadcasters will have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air." Id.

Importantly, throughout the Sixth R&O, the Commission emphasizes its intention to implement DTV flexibly, recognizing that the "implementation of DTV will be a dynamic process." Id. ¶ 182. Indeed, to ensure that the sound principles upon which the DTV Table is based become a reality, the Commission will need to embrace what it terms the "inevitable changes" to the DTV Table. Id. The Commission recognized this facet of the DTV transition at the outset: "[W]e intend to provide broadcasters with the flexibility to develop alternative allotment approaches and plans both prior to and after our adoption of a final Table of Allotments." Sixth Further Notice, ¶ 44.<sup>2</sup>

WHSV-TV will be unable to provide free over-the-air television programming to a significant portion of viewers in its service area without a change in its DTV assignment. As highlighted in the Sixth R&O, broadcasting on DTV Channel 49, WHSV-TV can replicate only 76.1% of its existing NTSC service area. The Commission predicts WHSV-TV will serve a substantially smaller area and roughly 100,000 fewer people on DTV Channel 49. Significantly, the area that is not replicated is in areas where population growth is expected. Reducing WHSV-TV's service area to this extent and depriving this number of viewers of service certainly is not in the interest of WHSV-TV or the public and runs

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<sup>2</sup> Sixth Further Notice of Proposed Rule Making, MM Docket No. 87-268, 11 FCC Rcd. 10968 (1996) ("Sixth Further Notice").

counter to the Commission's primary goal of non-disruption of existing service.<sup>3</sup>

In addition, if WHSV-TV is forced to broadcast on DTV Channel 49, it may face severe economic hardship. The transition to DTV service, although exciting and necessary, will require a large investment by WHSV-TV. The station may not be able to afford to make this transition only to lose several thousand viewers in its growing core service area. WHSV-TV's loss in revenue as a result of the assignment raises serious questions about the station's viability during the transition stage -- a period already expected to be expensive and difficult for both stations and viewers.

**II. WHSV-TV WILL SHORTLY BE ABLE TO PROPOSE AN ALTERNATIVE TO THE COMMISSION THAT WILL ALLOW THE STATION TO REPLICATE.**

It is plainly evident that WHSV-TV's potential DTV service will be limited through foreclosed opportunities due to increased, but avoidable, interference and reduced replication. To cure this problem, WHSV-TV is studying the possibility of using a VHF channel instead of DTV Channel 49. Assigning WHSV-TV a channel in the VHF band will cause viewers in WHSV-TV's service area much less inconvenience and loss of service as the transition progresses. Although our engineers have been unable to fully evaluate alternative stations, we believe we will shortly be able to show the Commission at least one alternative proposal that allows WHSV-TV to replicate its current service area while causing only minimal interference to other DTV allotments or other NTSC stations.

WHSV-TV is aware that MSTV is currently attempting to work a regional solution for the interference problems in three areas of the country. It is possible the

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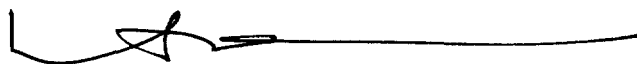
<sup>3</sup> Indeed, WHSV-TV is the only local commercial station in the Designated Market Area. Under these circumstances, loss of service is particularly serious.

solution for one of these areas (the northeast) may reach as far south as Virginia, and, accordingly, MSTV may propose a different channel for WHSV-TV. If MSTV's solution incorporates changes for WHSV-TV, we reserve the right to file comments on MSTV's approach with the Commission.

### **CONCLUSION**

The DTV Table is based on the principles of minimizing viewer disruption and providing broadcasters with the ability to reach the viewers on which its broadcasting service depends. The Commission's channel plan with respect to WHSV-TV serves neither of these goals. WHSV-TV believes a VHF channel can cure these problems, thereby ensuring its viewers have continued access to their free over-the-air television service. WHSV-TV is in the process of confirming which available VHF channel will replicate its service area and it will supplement its pleading accordingly. In the meantime, WHSV-TV submits this petition to register its concerns with the Commission and to provide it with advance notice of WHSV-TV's circumstances.

Respectfully submitted,



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BENEDEK LICENSE CORPORATION

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